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UNCLAS SECTION 01 OF 02 HANOI 002205

SIPDIS

FROM AMBASSADOR BURGHARDT TO CA/OCS/ACS/EAP AND L/CA

DEPARTMENT FOR CA/OCS, CA/OCS/ACS/EAP, EAP/BCLTV, L/CA

HO CHI MINH CITY FOR CONS

E.O. 12958: N/A

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SUBJECT: DEATH SENTENCE CASE OF JOHN NHU HUNG NGUYEN

REF: A) Gutzmer-Short-Slater email dated July 22, 2004

(subject: Legal assistance from Chief Council's Office), B)  
Hanoi 2047 and previous

11. (U) Summary. AmCit John Nguyen has been sentenced to death for drug trafficking. Post believes that this penalty is disproportionate to his crime, and given the state of Vietnam's judicial system, requests clearance on talking points supporting Mr. Nguyen's request for leniency. End Summary.

#### SENTENCE

12. (U) American citizen John Nhu Hung Nguyen was first convicted on 29 May 2002 of drug trafficking, sentenced to 20 years imprisonment, and fined 200 million Vietnamese Dong. He was convicted of a second drug trafficking charge on 26 February 2004 and his sentence was extended to life in prison. In an Appeals Court hearing on 16 June 2004 his sentence was increased to death.

#### EXCESSIVE AND DISPROPORTIONATE TO THE CRIME

13. (U) Mr. Nguyen's sentence far exceeds what he might have received for a similar crime in the U.S. DEA attorneys have informed post (ref A) that while they cannot say with certainty what sentence Mr. Nguyen would have received in the U.S., sentencing guidelines for his second offense call for a sentence of 78 to 175 months, to be adjusted by such factors as a previous criminal history, the individual's role in the offense, and the individual's acceptance of responsibility. Mr. Nguyen has no previous convictions in Vietnam, and claims to have cooperated fully with Vietnamese authorities. It is clear that, in comparison with what he might have received in the U.S., Mr. Nguyen's sentence is excessive and disproportionate to his offense.

#### VIETNAM'S LEGAL SYSTEM IS NOT RELIABLE, TRANSPARENT, OR FAIR

14. (SBU) Mission and the State Department have repeatedly said that there are serious deficiencies in Vietnam's legal system. Public statements, such as the Human Rights Report, put the Department on record as saying as much.

15. (U) Sentencing guidelines exist and investigations are generally thorough in Vietnam, but the outcome of a case can be vulnerable to political pressure. Some defendants have been convicted as scapegoats in the place of other seemingly guilty defendants, or have had their convictions made on weak or distorted evidence. Further, the GVN does not allow domestic or international observers into trials, so standards cannot be adequately assessed.

#### AUSTRALIA HAS SUCCESSFULLY MADE A REQUEST FOR LENIENCY

16. (U) Post is aware that an Australian was recently sentenced to death for a similar drug offense. Following a formal protest by the Government of Australia, the Australian's sentence was commuted to life in prison.

#### REQUEST FOR CLEARANCE

17. (U) To avoid the appearance of interfering with Vietnam's judicial process mission has sent diplomatic notes to the GVN stating that it is following the case with close interest, requesting confirmation that Mr. Nguyen's letter for leniency be given every due consideration, and asking to be kept informed of all developments in his case.

18. (U) Post believes that Mr. Nguyen's inordinately harsh sentence is but one aspect of a deficient legal system. We must not appear to be unaware of, or indifferent to the consequences of Vietnam's legal system for this American. As such, post requests clearance on the following talking

points to be delivered to the GVN:

- We would like to thank you for your cooperation on this case. Ministry of Foreign Affairs officials in Hanoi have been readily available to meet with Cons and have been helpful in monitoring the progression of this case.

- The Ministry of Foreign Affairs reports that his family's and his requests for leniency are making their way to the President's Office.

- We applaud your government for taking narcotics control so seriously. It was on the strength of Vietnam's dedication to combating narcotics that our governments recently signed a Letter of Agreement on Counternarcotics Cooperation, establishing projects designed to combat the production and trafficking of illicit narcotics and other forms of transnational criminal activities.

- Mr. Nguyen has been convicted of a very serious crime. We do not wish to make light of his offense or dispute his guilt. We respect the authority of your government to decide his sentence.

- However, we find Mr. Nguyen's sentence to be excessive and inordinate to the crime. A criminal convicted of the same offense in the U.S. might receive a much shorter sentence of around 78 to 175 months. A person convicted of Mr. Nguyen's crimes would never receive the death sentence or even life in prison.

- In light of the differing potential sentences, we ask that you grant Mr. Nguyen's request for leniency.

BURGHARDT